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Case Number 08-78

IN THE
SUPREME COURT OF THE UNITED STATES

KEITH ALLISON, PRO SE, JACKLIN ALLISON, PRO SE, ET AL – PETITIONERS

VS

WASHINGTON DENTURISTS ASSOCIATION, ET AL. – RESPONDENTS

APPENDIX X

KEITH ALLISON, PRO SE, JACKLIN ALLISON, PRO SE
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COMES NOW THE PETITIONERS for the purpose of submitting proposed Senate Bill 6886. Proposed legislation was submitted to the 60th Legislature during the 2008 Regular Session by Senators Oemig and Swecker. Read the first time 01/31/08. Referred to Committee on Health and Long-Term Care.

Petitioners are submitting this document at this time, because it only came into our possession on 15 September 2008 from Senator Curtis King and Representative Charles Ross of the 14th Legislative District.

As the Justices will undoubtedly note, beginning in paragraph 2, line 1 of page 3, the legislators of the State of Washington clearly acknowledge that illegal prosecution of prior registered denturists, and others, has occurred in the past. This, despite the full knowledge that such prosecutorial activity deprived individuals of their common law right to earn a living at their chosen

occupation when that occupation represents little, if any harm to the public. In doing so, state and/or county officials have gone far beyond their constitutionally limited regulatory powers.

SENATE BILL 6886

AN ACT Relating to access to complementary and alternative health care practitioners; adding a new chapter to Title 18 RCW; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. This act may be known and cited as the access to alternative medicine act.

NEW SECTION. Sec. 2. (1) The legislature finds that, based upon a comprehensive report by the national institute of health, a study published by the New England Journal of Medicine, and other research data, hundreds of thousands of individuals

in this state are presently receiving a substantial amount of health care from providers of health care services who are not licensed, registered, or certified by this state. Those studies further indicate that individuals from a wide variety of age, ethnic, socioeconomic, and other demographic categories utilizes these health care services, often times referred to as complimentary and alternative health care practices or natural healing therapies and modalities.

(2) The legislature, in RCW 18.120.010, stated its intent that all individuals should be permitted to enter into a health profession unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the profession and, where such a need is identified, the regulation adopted by the state should be set at the least restrictive level consistent with the public interest to be protected. This continues to be the intent of the legislature. However, notwithstanding

this intent, health care service practitioners who are not licensed, certified, or registered by the state may be alleged to be in technical violation of the professional practice laws governing such health care practitioners. As a result, a practitioner of the healing arts who is not licensed, certified, or registered by this state as a member of a health profession as defined in RCW 18.120.020(4) could currently be subject to investigations, disciplinary actions, fines, penalties, the restriction of practice, or the issuance of a cease and desist order although the practice does not cross the threshold of state regulatory concern for the public as set out in Chapter 18.120 RCW.

(3) It is the intent of the legislature to provide individuals a right to access every type of health care service provided by health care practitioners who are not licensed, certified, or registered by the state for

any individual seeking such services. Unrestricted access to health care services, of necessity, means that the health care service practitioners who are not licensed, certified, or registered by the state must be able to provide the services that individuals seek without risking civil or criminal investigations or sanctions sought by the state, its agencies, boards, or commissions.

(4) It is the intent of the legislature to allow health care practitioners who are not licensed, certified, or registered by the state, to provide any health care services sought by individuals, **unless there exists clear and convincing evidence that the specific health care service causes serious physical or mental harm or causes imminent and significant risk of discernable, significant, and serious physical or mental injury, under the circumstances in which the health care practitioner knew, or in the exercise of reasonable care should have known, would**

result in such injury (emphasis added).

(5) It is recognized that this chapter may authorize conduct by health care practitioners who are not licensed, certified, or registered by the state, which may be interpreted by the department of health or regulatory boards or commissions as overlapping with the statutory definition of the unlicensed practice of a health profession in RCW 18.120.020(4). It is the intent of this chapter to provide those practicing under this chapter safe harbor from violations of other provisions in this title.

(6) Because the legislature finds that health care services provided by practitioners who are not regulated by the state are widely used and desirable under certain circumstances, and in order to maximize and protect consumer options in health care, the legislature intends to remove current barriers to the public's access to such practitioners

providing health care services with appropriate consumer protections, as provided in this chapter.

NEW SECTION. Sec. 3. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Health care services" means health care and healing therapies and methods that are not prohibited by section 4 of this act and that are provided by a person who is not licensed, certified, or registered as a health care practitioner by this state. "Health care services" include, but are not limited to, the use of:

(a) Natural elements such as air, heat, water, and light;

(b) Class I or Class II medical devices approved by the federal food and drug administration for approved treatments as well as for off-label use;

(c) Other medical devices, tools, or procedures that may be nontraditional, unique, or experimental;

(d) Vitamins, minerals, herbs, natural food products and their extracts, and nutritional supplements;

(e) Dietary supplements as defined by the federal dietary supplement and health education act of 1994;

(f) Homeopathic remedies;

(g) Detoxification practices, including but not limited to sauna, foot baths, baths including the addition of herbs or other substances, colon hydrotherapy, and oxidative therapies; and

(h) Traditional cultural health care practices.

(2) "Diagnosis" means an intentional statement that someone has a specific medical condition reflected in the ICD-10 coding scheme or set out in an authoritative textbook relied upon by licensed practitioners of a specific regulated health care discipline. If a health care practitioner uses medical terminology or common words to advise a client to see a licensed, certified, or registered health

care practitioner in order to rule out a diagnosable condition, it is not a diagnosis. A statement by a health care practitioner who is not licensed, certified, or registered that symptoms may be indicative of or consistent with a specific medical condition, or that they have some probability significantly less than one hundred percent of having a specific medical condition, is not a diagnosis.

NEW SECTION. Sec. 4. Notwithstanding any other provision of law, a person who provides health care services in accordance with this chapter, but who is not licensed, certified, or registered by this state as a health care professional or practitioner, shall not be in violation of a law based on the unlicensed practice of a health profession as defined in RCW 18.120.020(4) unless the person:

(1) Performs surgery or any other procedure that harmfully severs or penetrates the tissue of the body, except for finger pricking for screening purposes. Penetration of natural body cavities or

orifices is not penetration of tissues;

(2) Prescribes or administers x-ray radiation or any other form of ionizing radiation to any person;

(3) Prescribes or dispenses corrective vision lenses or prescribes or administers vision therapy;

(4) Prescribes or administers a legend drug or controlled substance that state or federal law requires be prescribed or dispensed to the end user exclusively by a licensed, certified, or registered health care practitioner;

(5) Performs a chiropractic adjustment of the articulations of joints or the spine;

(6) Provides deep stroking of the muscle tissue of the human body, or represents that a practice is massage therapy;

(7) Sets fractures;

(8) Performs a health care service that is specifically described as the exclusive purview of the licensed practitioner in the individual practice acts of health professions as defined in RCW 18.120.020(4)

and is included in the curriculum of the profession's required educational programs, and is routinely practiced by members of that profession, provided that it does not fall under any exception in this chapter and is not routinely performed by laymen as self-directed care in private life;

(9) Intentionally diagnoses and treats a physical or mental condition of any person that causes an individual serious physical or mental harm or causes imminent and significant risk of discernable and significant physical or mental injury, under the circumstances in which the health care practitioner knew, or in the exercise of reasonable care should have known, would result in such injury. The potential for such injury must be easily recognizable and not remote or dependent upon tenuous argument and must be proven by clear and convincing evidence. Delay of conventional allopathic treatments alone cannot be determined to be, or potentially to be, serious physical or mental

harm; or

(1) Holds out, states, indicates, advertises, or implies to any person that he or she is a licensed, certified, or registered health care practitioner under the laws of the state.

NEW SECTION. Sec. 5. Any person providing health care services who is not licensed, certified or registered by this state and who is advertising or charging a fee for health care services, shall, prior to providing such services, disclose to the individual, in a plainly worded written statement that the practitioner is not a state licensed certified, or registered practitioner. The practitioner must also obtain informed consent prior to providing services, as that term has been construed by common law.

NEW SECTION. Sec. 6. (1)(a) The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer

protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(b) The attorney general may bring an action to obtain a cease and desist order against a practitioner for a violation. In any proceeding under this chapter, the attorney general bears the burden of proof and must meet that burden with clear and convincing evidence. However, before enforcement proceedings may commence, good faith mediation must be utilized by the state in an attempt to bring a practitioner into voluntary compliance with this section.

(2) Notwithstanding state laws that define the unlicensed practice of a health profession as defined in RCW 18.120.020(4), any alternative or

complementary health care services that are not customarily within the practice of health professions as defined in RCW 18.120.020(4) or not included in the curriculum of the required education for those professions, is outside the scope of the profession and, therefore, outside the scope and jurisdiction of the professional quality assurance commissions or regulatory boards.

NEW SECTION. Sec. 7. Any pending investigations or disciplinary actions that could not be brought under the provisions of this chapter shall be dismissed within thirty days of the effective date of this act. Any disciplinary sanctions that have been imposed in pending or final actions that could not be brought under the provisions of this chapter, are revoked and must be expunged within sixty days of the effective date of this act without application by the health care practitioner. All fines or costs collected shall be refunded.

NEW SECTION. Sec. 8. This act does not

prevent any health care professional who is licensed, certified, or registered by this state, from providing health care services under this chapter. The scope of licensure of all licensed practitioners includes anything an unlicensed person can do.

NEW SECTION. Sec. 9. Sections 1 through 8 of this act constitute a new chapter in Title 18 RCW.

NEW SECTION. Sec. 10. This act is necessary for the immediate preservation of the public peace, health, safety, or support of the state government and its existing public institutions and takes effect May 1, 2008.

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Clearly, this proposed legislation is intended to right the too numerous wrongs committed by elements and/or employees of Washington State Government.